STATE OF MICHIGAN

COURT OF APPEALS

BOSQUETT & COMPANY,

Plaintiff-Appellant,

v

STERLING BENEFITS, LLC and STERLING AGENCY, INC.,

Defendants-Appellees.

UNPUBLISHED
March 18, 2021

No. 352054
Oakland Circuit Court
LC No. 2019-175160-CK

BOSQUETT & COMPANY,

Plaintiff-Appellee,

v

STERLING BENEFITS, LLC and STERLING AGENCY, INC.,

Defendants-Appellants.

No. 352657
Oakland Circuit Court
LC No. 2019-175160-CK

Before: O'BRIEN, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

In Docket No. 352054, Bosquett & Company appeals as of right the trial court's December 12, 2019 order granting summary disposition in favor of Sterling Benefits, LLC and Sterling Agency, Inc (Sterling). On appeal, Bosquett argues that the trial court erred when it granted Sterling's motion for summary disposition because this Court's prior opinion in *Sterling Benefits, LLC v Fischer*, unpublished per curiam opinion of the Court of Appeals, issued June 6, 2019 (Docket No. 342529), did not preclude Bosquett from bringing an independent claim under MCR 2.612(C)(3). Bosquett also argues that the trial court erred because issues of fact precluded summary disposition. In Docket No. 352657, Sterling appeals as of right the trial court's February 6, 2020 order denying Sterling's motion for sanctions. On appeal, Sterling argues that its motion

for sanctions should have been granted because the collateral estoppel effect of this Court's prior opinion in *Sterling Benefits* rendered Bosquett's complaint frivolous. For the reasons set forth below, we affirm.

I. BACKGROUND

This case involves a dispute between Bosquett and Sterling over a default judgment against Bosquett held by Sterling. This Court's prior decision in *Sterling Benefits* provides a summary of the relevant background facts that led to this litigation:

> This case involves a default judgment entered against Bosquett in 2010. In 2006 and 2007, defendant Barry Paulsell attempted to purchase a minority stake in Bosquett, which was owned by David Fischer. Paulsell allegedly paid Fischer $500,000, with the understanding that he was purchasing a 25% ownership interest in Bosquett. Instead of issuing Paulsell the shares of stock, however, Fischer and others allegedly engaged in fraudulent activities and sold Bosquett's assets for personal benefit. On September 2, 2009, Paulsell, on his own behalf and on behalf of the corporation, sued Fischer, Bosquett, and other defendants, alleging fraud, misrepresentation, breach of fiduciary duty, conversion, unjust enrichment, and tortious interference with contractual relations.
>
> According to the record, the complaint was personally served upon Fischer, individually and as the registered agent for Bosquett. Neither Fischer nor Bosquett filed a responsive pleading in the case. On September 9, 2009, all parties appeared before the trial court for a hearing on Paulsell's motion for preliminary injunction. An attorney appeared at the hearing on behalf of Fischer and Bosquett, indicating that he was representing Bosquett in its role as defendant; the attorney did not enter a formal appearance in the case, however.
>
> Thereafter, by letter dated October 15, 2009, Paulsell's counsel informed Fischer's and Bosquett's attorney that he planned to seek a default unless an answer was filed. No answer was filed, and Paulsell sought a default against Fischer and Bosquett, which was entered by the trial court on October 26, 2009. The record indicates that Fischer and Bosquett were served with the default by first-class mail. Paulsell then stipulated to dismiss his claims against the remaining defendants, who were dismissed by order of the trial court dated October 30, 2009. The trial court then closed the case, apparently inadvertently; on January 7, 2010, the trial court reopened the case against Fischer and Bosquett.
>
> Paulsell thereafter moved for entry of a default judgment against Fischer and Bosquett, seeking statutory treble damages for conversion, asking for judgment in the amount of $1,500,000. Accompanying Paulsell's motion was the June 7, 2007 letter from Fischer in which he acknowledged on behalf of Bosquett receipt of $500,000 from Paulsell. Paulsell also submitted an affidavit attesting to the payment and loss of that money. The trial court entered a default judgment on January 8, 2010 in favor of Paulsell, and against Fischer and Bosquett, in the amount of $1,500,000, plus attorney fees of $15,000. Apparently believing that

Fischer and Bosquett did not have assets to satisfy the judgment, Paulsell never attempted to collect on the judgment.

Meanwhile, in September 2009, Sterling Benefits, LLC, allegedly purchased Bosquett's assets, including various customer accounts. That purchase agreement allegedly provided for commissions to be paid to Bosquett, which Sterling allegedly did not pay. In 2016, Bosquett sued Sterling, seeking payment of the commissions.

In 2018, Sterling purchased the default judgment from Paulsell, apparently anticipating offsetting the default judgment against any amounts it might be determined to owe Bosquett in the Sterling-Bosquett litigation. Bosquett thereafter filed in this case an emergency motion for relief from the default judgment, arguing that the default should be set aside because the 2009 complaint had not specifically sought damages against Bosquett. The trial court, with a new trial judge presiding, granted Bosquett's motion, concluding that because the complaint had not sought money damages against Bosquett, Paulsell's motion for default seeking money damages against Bosquett had been a misrepresentation to the trial court. [*Sterling Benefits*, unpub op at 2-3 (footnotes omitted)].

This Court reversed the trial court's order setting aside the default judgment under MCR 2.603(D)(1), explaining first that it was an abuse of discretion because Bosquett failed to demonstrate good cause or submit an affidavit of meritorious defense in order to set aside the default judgment. *Sterling Benefits*, unpub op at 4-5. This Court also reversed the trial court's order setting aside the default judgment under MCR 2.612(C), stating:

In this case, the trial court concluded that Paulsell had made some mistake or misrepresentation to the trial court when obtaining the default judgment, because the complaint had not sought money damages specifically from Bosquett. We note that the record does not support this conclusion. Although Paulsell's complaint was not a model of pleading, each count of the complaint sought damages from the "defendants" generally, and Bosquett was named as a defendant. The complaint thus arguably alleged liability for all defendants, including Bosquett, for the funds Paulsell paid to Fischer, and Paulsell's subsequent efforts to secure a default judgment against Bosquett when it failed to respond to the complaint do not necessarily demonstrate misrepresentation or subterfuge by Paulsell.

* * *

In addition, contrary to Bosquett's assertion, MCR 2.612(C)(3) does not provide a basis for relief from the judgment in this case. MCR 2.612(C)(3) provides that the court may entertain an independent action to relieve a party from judgment or set aside the judgment for fraud on the court. Here, Bosquett did not pursue an independent action, and the trial court indicated that it was not making a finding of fraud on the court. Bosquett therefore was not entitled to relief from judgment under MCR 2.612(C)(3). [*Sterling Benefits*, unpub op at 6-7.]

After this Court's opinion in *Sterling Benefits*, Bosquett filed an independent action under MCR 2.612(C)(3) to set aside the default judgment. Bosquett claimed that it was appropriate to set aside the default judgment because Paulsell's actions amounted to fraud on the court, and because Paulsell's attorney made material misrepresentations to the trial court about service on Bosquett's and Fischer's attorney. The parties filed cross-motions for summary disposition. The trial court granted Sterling's motion, concluding that under collateral estoppel, this Court's opinion in *Sterling Benefits* precluded any claim that Paulsell made a mistake or misrepresentation when seeking default judgment. The trial court also concluded that Bosquett's remaining allegations failed to justify setting aside the default judgment. Sterling subsequently moved for sanctions under MCL 600.2591, which the trial court denied. These appeals followed.[1]

II. DOCKET NO. 352054

A. STANDARD OF REVIEW

In Docket No. 352054, Bosquett challenges the trial court's decision to grant summary disposition in favor of Sterling. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015). Sterling moved for summary disposition under MCR 2.116(C)(7) and (8). For a motion brought under MCR 2.116(C)(7):

> [T]his Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. [*Hutchinson v Ingham Co Health Dep't*, 328 Mich App 108, 123; 935 NW2d 612 (2019) (quotation marks and citation omitted) (alteration in original).]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

For a motion filed under MCR 2.116(C)(8):

> All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. When deciding

[1] The appeals were consolidated "to advance the efficient administration of the appellate process." *Bosquett & Co v Sterling Benefits, LLC*, unpublished order of the Court of Appeals, entered February 28, 2020 (Docket Nos. 352054 and 352657).

> a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5). [*Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).]

In addition, "[t]he applicability of legal doctrines such as res judicata and collateral estoppel are questions of law to be reviewed de novo." *Allen Park Retirees Ass'n v Allen Park*, 329 Mich App 430, 443; 942 NW2d 618 (2019).

B. DISCUSSION

The trial court granted summary disposition in Sterling's favor for two reasons: (1) collateral estoppel precluded Bosquett from asserting that Paulsell misrepresented his complaint when seeking default judgment and (2) no reasonable juror could conclude that the allegedly false statement made by Paulsell's attorney to the trial court was an intentional misrepresentation to the court. Neither reason was erroneous.

"Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *William Beaumont Hosp v Wass*, 315 Mich App 392, 398; 889 NW2d 745 (2016) (quotation marks and citation omitted). The first element is applied "strictly" such "that [t]he issues [in both cases] must be identical, and not merely similar." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 340; 657 NW2d 759 (2002) (quotation marks and citation omitted) (alteration in original). For the second element, "[t]he previous litigation must have presented a 'full and fair' opportunity to litigate the issue presented in the subsequent case." *Id*. As for the final element, "[m]utuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action." *Monat v State Farm Ins Co*, 469 Mich 679, 683; 677 NW2d 843 (2004) (quotation marks and citation omitted) (alteration in original).

In *Sterling Benefits*, this Court determined that Paulsell's allegedly fraudulent actions did not rise to the level of actionable fraud or misrepresentation:

> In this case, the trial court concluded that Paulsell had made some mistake or misrepresentation to the trial court when obtaining the default judgment, because the complaint had not sought money damages specifically from Bosquett. We note that the record does not support this conclusion. Although Paulsell's complaint was not a model of pleading, each count of the complaint sought damages from the "defendants" generally, and Bosquett was named as a defendant. The complaint thus arguably alleged liability for all defendants, including Bosquett, for the funds Paulsell paid to Fischer, and Paulsell's subsequent efforts to secure a default judgment against Bosquett when it failed to respond to the complaint do not necessarily demonstrate misrepresentation or subterfuge by Paulsell. [*Sterling Benefits*, unpub op at 6-7.]

Thus, under collateral estoppel, Bosquett was precluded from asserting that Paulsell's conduct in pursuing the default judgment was fraudulent because this Court already concluded it was not. See *Wass*, 315 Mich App at 398.

Bosquett argues that while this Court may have determined that Paulsell did not make a mistake or misrepresentation, this Court did not find that Paulsell's actions were not a *fraud on the court*. Bosquett fails to explain or cite any legal authority for the proposition that fraud on the court is different than misrepresentation or subterfuge, thereby abandoning the issue. See *Johnson v Johnson*, 329 Mich App 110, 126; 940 NW2d 807 (2019) (quotation marks and citation omitted) ("An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims.").

Even were we to consider the issue, we would conclude that Bosquett's argument is not persuasive. To establish a claim for intentional misrepresentation or fraud, the party must show the following elements:

> (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Bergen v Baker*, 264 Mich App 376, 382; 691 NW2d 770 (2004) (quotation marks and citation omitted).]

To be entitled to relief in an independent action under MCR 2.612(C)(3) for fraud on the court, the party must demonstrate:

> (1) the judgment is one that ought not, in equity and good conscience, be enforced, (2) there is a valid defense to the alleged cause of action on which the judgment is founded, (3) fraud . . . prevented the defendant from obtaining the benefit of the defense, (4) there was no negligence or fault on the part of the defendant, and (5) there is no adequate remedy available at law. [*Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 589; 644 NW2d 54 (2002).]

Clearly, both a claim for fraud and a claim for relief from judgment for fraud on the court require the plaintiff to show fraud. This Court already determined Paulsell did not commit fraud while seeking default judgment, *Sterling Benefits*, unpub op at 6-7, thereby foreclosing any effort by Bosquett to set aside the default judgment on the basis of Paulsell's allegedly fraudulent conduct during the proceedings.

In urging this Court to reach a different conclusion, Bosquett argues this Court's statement about Paulsell's conduct was obiter dictum that could not be relied on by the trial court to grant Sterling's motion for summary disposition. We disagree.

"It is a well-settled rule that any statements and comments in an opinion concerning some rule of law or debated legal proposition not necessarily involved nor essential to determination of the case in hand are, however illuminating, but obiter dicta . . . ." *McNally v Bd of Canvassers of Wayne Co*, 316 Mich 551, 558; 25 NW2d 613 (1947). "Obiter dicta are not binding precedent," but are instead "statements that are unnecessary to determine the case at hand and, thus, lack the force of an adjudication." *Auto Owners Ins Co v Seils*, 310 Mich App 132, 160 n 7; 871 NW2d 530 (2015) (quotation marks and citation omitted). "[W]here a decision rests on two or more

grounds, none can be relegated to the category of obiter dictum." *Taylor v Kurapati*, 236 Mich App 315, 356 n 58; 600 NW2d 670 (1999) (quotation marks and citation omitted).

In the underlying litigation, "the trial court concluded that Paulsell had made some mistake or misrepresentation to the trial court when obtaining the default judgment, because the complaint had not sought money damages specifically from Bosquett." *Sterling Benefits*, unpub op at 6. This Court disagreed, stating that "the record does not support this conclusion," and "Paulsell's subsequent efforts to secure a default judgment against Bosquett when it failed to respond to the complaint do not necessarily demonstrate misrepresentation or subterfuge by Paulsell." *Id*. at 6-7. This Court therefore reversed the trial court's order setting aside the default judgment under MCR 2.612(C)(3). *Id*. at 7.

There is no colorable argument that this Court's discussion of Paulsell's actions when obtaining default judgment was not "necessarily involved nor essential to determination of the case in hand . . . ." *McNally*, 316 Mich at 558. Rather, that Paulsell's actions were not fraudulent was a basis for this Court's conclusion that the trial court abused its discretion when it set aside the default judgment. While this Court may have given other reasons for reversal, our conclusion that Paulsell's actions were not fraudulent cannot "be relegated to the category of obiter dictum." *Taylor*, 236 Mich App at 356 n 58.

In addition to Bosquett's claims that were precluded under collateral estoppel, the trial court considered Bosquett's remaining allegation that Paulsell's attorney made a material misrepresentation to the court about service on Bosquett's and Fischer's attorney. The court concluded that the attorney's conduct did not rise to the level of an "intentional misrepresentation" to set aside judgment under MCR 2.612(C)(3). Bosquett asserts the trial court engaged in improper factfinding when making this determination.

As recited by the trial court, when questioned by the court whether he served the default on Bosquett's and Fischer's attorney, Paulsell's attorney responded, "Fischer, Bosquett *and if memory serves me correctly, I think we also sent a courtesy copy to the attorney*." The trial court concluded Bosquett could not maintain an action under MCR 2.612(C)(3) on the basis of this statement because, "[w]hile [the attorney] may have been wrong, the statement does not rise to an intentional misrepresentation that the attorney was served." The trial court noted that Bosquett "never provided any reasonable excuse for its failure to participate in the proceedings," and "Fischer, individually and as resident agent for Bosquett, was served with the pleadings in the underlying case." On these facts, the court concluded that no reasonable juror could believe that the statement of Paulsell's attorney rose to the level of an intentional misrepresentation.

Contrary to Bosquett's argument, the trial court did not engage in improper factfinding. Rather, the court properly made conclusions of law on the basis of the record provided by the parties. Because Sterling's motion was brought under MCR 2.116(C)(8), the trial court accepted as true Bosquett's assertion about what Paulsell's attorney said, but concluded that, even construing the statement in the light most favorable to Bosquett, Bosquett's allegation that the statement rose to an intentional misrepresentation was "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden*, 461 Mich at 119-120 (quotation marks and citation omitted). We agree with the trial court's conclusions. Therefore, Bosquett is not entitled to appellate relief.

III. DOCKET NO. 352657

A. STANDARD OF REVIEW

In Docket No. 352657, Sterling challenges the trial court's order denying its motion for sanctions. "This Court reviews a trial court's decision regarding the imposition of a sanction for clear error." *Holton v Ward*, 303 Mich App 718, 734; 847 NW2d 1 (2014). "The trial court's decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed." *Id*. (quotation marks and citation omitted).

The proper interpretation of statutes and court rules is reviewed de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). "The overall goal of statutory interpretation is to give effect to the intent of the Legislature." *Hmeidan v State Farm Mut Auto Ins Co*, 326 Mich App 467, 478; 928 NW2d 258 (2018). "If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written." *Tevis v Amex Assurance Co*, 283 Mich App 76, 81; 770 NW2d 16 (2009).

B. DISCUSSION

Sterling argues that sanctions were mandatory because *Sterling Benefits* rendered Bosquett's complaint frivolous. The trial court disagreed, concluding that Bosquett's complaint contained a legal and factual basis. We agree with the trial court.

"Generally, awards of costs and attorney fees are recoverable only where specifically authorized by a statute, a court rule, or a recognized exception." *Pioneer State Mut Ins Co v Michalek*, 330 Mich App 138, 146; 946 NW2d 812 (2019). Sterling sought sanctions under MCL 600.2591, which states:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (*ii*) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(*iii*) The party's legal position was devoid of arguable legal merit.

"The determination whether a claim or defense is frivolous must be based on the circumstances at the time it was asserted." *Michalek*, 330 Mich App at 147 (quotation marks and citation omitted). "Not every error in legal analysis constitutes a frivolous position." *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003) (quotation marks and citation omitted).

Sterling claims this case is controlled by *Holton*, where this Court concluded that the trial court clearly erred when it denied the defendant's motion for sanctions because the plaintiffs' lawsuit was "devoid of arguable legal merit." *Holton*, 303 Mich App at 735. In *Holton*, the plaintiffs and the defendant were adjacent landowners on parcels once owned by a common owner. *Id*. at 720-721. The land also included an artificial pond, which was "split between [the] plaintiffs' and [the] defendant's properties." *Id*. at 721. This Court explained the plaintiffs' legal claim as "the right to use that portion of the pond on [the] defendant's property under the theory of riparian rights, despite the fact that (1) the pond is artificial and man-made, and (2) their parcel does not abut a natural watercourse, but merely this artificial pond." *Id*. (footnote omitted). As to the merit of that theory, this Court explained:

> Michigan law is clear that riparian rights adhere to land that abuts a natural watercourse, and not, as here, to artificial or man-made bodies of water. Yet despite this well-established Michigan precedent and an earlier ruling by the Michigan Department of Environmental Quality (DEQ) that rejected a similar riparian rights claim brought by Mr. Holton to gain access to [the] defendant's property, [the] plaintiffs once again seek to establish riparian rights to gain access to property which is rightfully [the] defendant's. [*Id*.]

The plaintiffs admitted that the pond was artificial and that they knew their claims had already been adjudicated by DEQ. *Id*. at 735. This Court also noted that the plaintiffs had reason to know their position was meritless because "the Michigan caselaw cited in [the] plaintiffs' briefs clearly states that riparian rights do not attach to land abutting artificial waters." *Id*. Consequently, this Court concluded that the lawsuit was "little more than an attempt to void the DEQ's determination through other legal avenues—and also an effort to harass [the] defendant, and perhaps wear her down, with yet another legal action." *Id*. at 735-736.

The case now before this Court is dissimilar from *Holton* in key respects. First, unlike the plaintiffs in *Holton*, Bosquett was not pursuing its claims in the face of black-letter law adverse to its position. In the prior appeal, this Court observed that "MCR 2.612(C)(3) provides that the court may entertain an independent action to relieve a party from judgment or set aside the judgment for fraud on the court." *Sterling Benefits*, unpub op at 7. This Court then noted that "Bosquett did not pursue an independent action," and concluded that "Bosquett therefore was not entitled to relief from judgment under MCR 2.612(C)(3)." *Id*. Bosquett appears to have taken this statement as an invitation by this Court to pursue an independent action in the trial court, as evidenced by certain statements it made in filings with the trial court. Though it is clear that this Court was in fact not inviting an independent action when the above statements are read in conjunction with this Court's treatment of Paulsell's behavior, Bosquett's interpretation of this Court's statements was not wholly unreasonable, particularly when the statements are read in isolation. Thus, while this Court's prior opinion precluded Bosquett's independent action for the reasons explained in this

opinion, the prior opinion nevertheless had the allure of inviting Bosquett's action. See *Fette v Peters Constr Co*, 310 Mich App 535, 551; 871 NW2d 877 (2015) ("It is well established that a lack of clear appellate law can be a basis to bring a claim in good faith.").

Second, and more importantly, this case differs from *Holton* because, unlike the plaintiffs in *Holton*, Bosquett made claims in its complaint that were not precluded under *Sterling Benefits*. Specifically, Bosquett asserted that Paulsell's attorney's alleged misrepresentations about service on Bosquett's and Fischer's attorney justified relief under MCR 2.612(C)(3). *Sterling Benefits* did not address this alleged misrepresentation. Although the trial court did not agree with Bosquett's argument about the import of the statement, the claim was not devoid of legal or factual support. See MCL 600.2591(3)(a). For these reasons, the trial court's decision to not impose sanctions was not clearly erroneous.

IV. CONCLUSION

Affirmed. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Colleen A. O'Brien
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher